

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

NATHANIEL SHAW,

Plaintiff,

vs.

D. T. MARSHALL, et al.,

Defendants.

*

*

*

* **Civil Action No.**

* **2:07-CV-606-ID**

*

*

*

*

**DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION REQUESTING LEAVE
TO FILE MOTION FOR CONTEMPT OF PERJURY
AND SUPPLEMENT TO FACTS IN SPECIAL REPORT**

COME NOW the Defendants D. T. Marshall, Gina M. Savage, Cassandra Smith and Sondra Wright, and for response to Plaintiff's Motion Requesting Leave to File Motion for Contempt of Perjury, requests that this Court deny said motion and as grounds shows as follows:

1. Plaintiff claims that the Affidavit of Gina M. Savage incorrectly identifies the date he was incarcerated at the Montgomery County Detention Facility as May 8, 2007 instead of May 9, 2007. When Defendant prepared her affidavit, she used the date from the police report that shows that Plaintiff was arrested on May 8, 2007. (See Affidavit of Gina M. Savage, ¶ 2, and attachment thereto) Plaintiff's correct date of incarceration is in fact May 9, 2007. This was an inadvertent mistake on the part of the Defendant Savage and was not made for the purpose of misrepresenting the facts in the Defendants' Special Report. (Affidavit of Gina M. Savage, ¶ 2) Defendants hereby

amend their Special Report to show that Plaintiff was incarcerated at the Montgomery County Detention Facility on May 9, 2007

2. Plaintiff also claims that the Affidavit of Gina M. Savage incorrectly states that recreation was available to the Plaintiff on May 3, 2007. When preparing her affidavit, Defendant Savage submitted the list of dates and times when recreation was available to the 3-B cellblock where the Plaintiff was housed. Plaintiff entered the facility in May and filed his complaint in July. Defendant Savage therefore listed the recreation times that were available to 3-B cellblock for the months of May-July, 2007. Since Plaintiff was not incarcerated at the facility until May 9, 2007, however, recreation was not available to the Plaintiff on May 3, 2007. Plaintiff was offered recreation on the other dates listed, May 31, June 28 and July 16, but he refused to participate. Including May 3 as one of the dates offered to the Plaintiff was an unintentional oversight on the part of Defendant Savage, and was not a knowing misstatement, nor was it a made for the purpose of misrepresenting the facts in the Defendants' Special Report. Defendants amend their Special Report by stating that the times recreation were made available to the Plaintiff were May 31, June 28 and July 16, 2007.

/s/Constance C. Walker

Thomas T. Gallion, III (ASB-5295-L74T)

Constance C. Walker (ASB-5510-L66C)

Attorneys for Defendants D.T. Marshall,

Gina M. Savage, Cassandra Smith and

Sondra Wright

OF COUNSEL:

HASKELL SLAUGHTER YOUNG & GALLION, L.L.C.

Post Office Box 4660

Montgomery, Alabama 36103-4660

(334) 265-8573

(334) 264-7945 (fax)

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of October, 2007, I electronically filed the foregoing with the Clerk of the Court using the **CM/ECF** system that will send notification of such filing to the following counsel:

Wayne P. Turner
Post Office Box 152
Montgomery, Alabama 36101-0152

Allison H. Highley
City of Montgomery
Legal Department
Post Office Box 1111
Montgomery, Alabama 36101

and that I caused a true and complete copy of same to be deposited in **the United States Mail**, sufficient first class postage prepaid, on this the 12th day of October, 2007, addressed as follows:

Nathaniel Shaw
Montgomery County Detention Facility
Post Office Box 4599
Montgomery, Alabama 36103

s/Constance C. Walker
Of Counsel

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

NATHANIEL SHAW,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 2:07-CV-606-ID
)	
D. T. MARSHALL, et al.,)	
)	
Defendants.)	

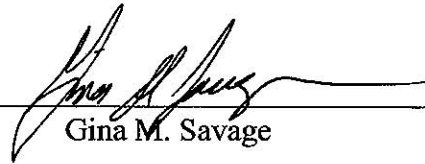
AFFIDAVIT OF GINA M. SAVAGE

Before me, a Notary Public, personally appeared Gina M. Savage and after being duly sworn, did say as follows


1. My name is Gina Savage. I am Director of the Montgomery County Sheriff's Office Detention Facility.
2. In response to Inmate Nathaniel Shaw's allegations of perjury, I offer the following. When compiling my answer to charges submitted by Inmate Shaw, I picked up the date he was arrested from the police report which shows May 8, 2007. (See attached) Our records show he was booked into the Montgomery County Detention on May 9, 2007.

Inmate Shaw's statement that he was not incarcerated on May 3, 2007, therefore recreation was not offered to him is correct. I submitted a list of the times recreation was offered to the 3-B cellblock, where Inmate Shaw has been housed, beginning with the month of May through the month of July 2007. He filed his complaint July 16, 2007.

Each of these items regarding dates is simply an oversight on our part and in no way should be construed as an intentional act or as being purposely used to misrepresent facts in our response.


Gina M. Savage

Sworn to and subscribed before me this 4th day of October, 2007.


Notary Public
My Commission Expires September 13, 2010

ALABAMA UNIFORM ARREST REPORT

Fingerprinted	R84 Completed
<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
<input type="checkbox"/> No	<input type="checkbox"/> No

OFFICER'S WORK PRODUCT MAY NOT BE PUBLIC INFORMATION

IDENTIFICATION	1 ORI# 0 0 3 0 1 0 0	2 AGENCY NAME Montgomery Police Department	3 CASE # 0 7	4 SFX	
	5 LAST, FIRST, MIDDLE NAME Shaw, Nathaniel		6 ALIAS AKA		
	7 SEX <input checked="" type="checkbox"/> M <input type="checkbox"/> F	8 RACE <input type="checkbox"/> W <input checked="" type="checkbox"/> B <input type="checkbox"/> A <input type="checkbox"/> I	9 HGT. 6'02	10 WGT. 180	11 EYE Brn
	12 HAIR Blk	13 SKIN Med	14 <input type="checkbox"/> SCARS	<input type="checkbox"/> MARKS	<input type="checkbox"/> TATTOOS
ARREST	15 PLACE OF BIRTH (CITY, COUNTY, STATE) Florida		16 SSN 2 6 7 - 8 4 - 0 4 3 3	17 DATE OF BIRTH 0 3 / 0 1 / 4 9	
	18 AGE 58	19 MISCELLANEOUS ID #		20 SID #	
	21 FINGERPRINT CLASS KEY MAJOR PRIMARY SCOV SUB-SECONDARY FINAL		22 DL #	23 ST	
	24 FBI #	HENRY CLASS		25 IDENTIFICATION COMMENTS	
	26 NCIC CLASS				
	28 <input type="checkbox"/> RESIDENT <input checked="" type="checkbox"/> NON-RESIDENT	27 HOME ADDRESS (STREET, CITY, STATE, ZIP) 9445 Carbondale Dr W Jacksonville FL 32208		28 RESIDENCE PHONE (334)	
	29 OCCUPATION (BE SPECIFIC) Unemployed		30 EMPLOYER (NAME OF COMPANY/SCHOOL)		
	31 BUSINESS ADDRESS (STREET, CITY, STATE, ZIP)		32 BUSINESS PHONE ()		
	33 LOCATION OF ARREST (STREET, CITY, STATE, ZIP) Pulix on Atlanta Highway		34 SECTOR # 0 5	35 ARRESTED FOR YOUR JURISDICTION? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
	36 CONDITION OF <input type="checkbox"/> DRUNK <input type="checkbox"/> SOBER <input type="checkbox"/> ARRESTEE <input type="checkbox"/> DRINKING <input checked="" type="checkbox"/> DRUGS	37 RESIST ARREST? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	38 INJURIES? <input type="checkbox"/> OFFICER <input checked="" type="checkbox"/> ARRESTEE	39 ARMED? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	40 DESCRIPTION OF WEAPON <input type="checkbox"/> HANDGUN <input type="checkbox"/> OTHER FIREARM <input type="checkbox"/> RIFLE <input type="checkbox"/> OTHER WEAPON <input type="checkbox"/> SHOTGUN
41 DATE OF ARREST 0 5 / 0 8 / 0 7	42 TIME OF ARREST 12:30	43 DAY OF ARREST 1. AM <input checked="" type="checkbox"/> MIL 2. PM	44 TYPE ARREST <input type="checkbox"/> ON VIEW <input checked="" type="checkbox"/> CALL <input type="checkbox"/> WARRANT	45 ARRESTED BEFORE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN	
46 CHARGE-1 <input checked="" type="checkbox"/> FEL <input type="checkbox"/> MISO C.P.F.I. 2nd x3	47 UCR CODE	48 CHARGE-2 <input checked="" type="checkbox"/> FEL <input type="checkbox"/> MISO Theft of Property 1st by Deception	49 UCR CODE		
50 STATE CODE/LOCAL ORDINANCE	51 WARRANT #	52 DATE ISSUED	53 STATE CODE/LOCAL ORDINANCE	54 WARRANT #	
55 DATE ISSUED					
56 CHARGE-3 <input checked="" type="checkbox"/> FEL <input type="checkbox"/> MISO Tafficing in Stolen Indentities	57 UCR CODE	58 CHARGE-4 <input checked="" type="checkbox"/> FEL <input type="checkbox"/> MISO Possession of a Controlled Substance	59 UCR CODE		
60 STATE CODE/LOCAL ORDINANCE	61 WARRANT #	62 DATE ISSUED	63 STATE CODE/LOCAL ORDINANCE	64 WARRANT #	
65 DATE ISSUED					
66 ARREST DISPOSITION <input type="checkbox"/> HELD <input type="checkbox"/> TOT-LE <input type="checkbox"/> BAIL <input type="checkbox"/> OTHER <input type="checkbox"/> RELEASED		67 IF OUT ON RELEASE WHAT TYPE?			
68 ARRESTED WITH (1) ACCOMPLICE (FULL NAME)		69 ARRESTED WITH (2) ACCOMPLICE (FULL NAME)			
70 VYR					
71 VMA					
72 VMO					
73 VST					
74 VCO TOP BOTTOM					
75 TAG #					
76 LIS					
77 LIY					
78 VIN					
79 IMPOUNDED? <input type="checkbox"/> YES <input type="checkbox"/> NO					
80 STORAGE LOCATION / IMPOUND #					
81 OTHER EVIDENCE SEIZED/PROPERTY SEIZED					
82 JUVENILE <input type="checkbox"/> HANDLED AND RELEASED <input type="checkbox"/> REF. TO WELFARE AGENCY <input type="checkbox"/> REF. TO ADULT COURT DISPOSITION: <input type="checkbox"/> REF. TO JUVENILE COURT <input type="checkbox"/> REF. TO OTHER POLICE AGENCY					
83 RELEASED TO					
84 PARENT OR GUARDIAN (LAST, FIRST, MIDDLE NAME)					
85 ADDRESS (STREET, CITY, STATE, ZIP)					
86 PHONE ()					
87 PARENTS EMPLOYER					
88 OCCUPATION					
89 ADDRESS (STREET, CITY, STATE, ZIP)					
90 PHONE ()					
91 DATE AND TIME OF RELEASE 0 5 / 0 8 / 0 7 1. AM <input checked="" type="checkbox"/> MIL 2. PM					
92 RELEASING OFFICER NAME J W Hall					
93 AGENCY/DIVISION MPD / Detective					
94 ID # 1316					
95 RELEASED TO: M.C.D.F.					
96 AGENCY/DIVISION M.C.S.O.					
97 AGENCY ADDRESS 250 N. McDonough St Montgomery					
98 PERSONAL PROPERTY RELEASED TO ARRESTEE <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> PARTIAL					
99 PROPERTY NOT RELEASED/HELD AT:					
100 PROPERTY #					
101 REMARKS (NOTE ANY INJURIES AT TIME OF RELEASE) ****NONE****					
HOLD FOR PRATTVILLE					
HOLD FOR FLORSDA - Camden S.O.					
102 SIGNATURE OF RECEIVING OFFICER					
103 SIGNATURE OF RELEASING OFFICER					
104 CASE #					
105 SFX					
106 CASE #					
107 SFX					
108 CASE #					
109 SFX					
110 ADDITIONAL CASES CLOSED NARRATIVE <input type="checkbox"/> Y <input type="checkbox"/> N					
111 ARRESTING OFFICER (LAST, FIRST, M.) Coughlin C J					
112 ID # 1008					
113 ARRESTING OFFICER (LAST, FIRST, M.) Hall J W					
114 ID # 1316					
115 SUPERVISOR					
116 WATCH CMDR. ID #					

TYPE OR PRINT IN BLACK INK ONLY

ACJIC-34 REV. 10-90